UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,037	12/30/2003	Andrew S. Grover	42.P18168	9197

7590   09/25/2006

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EXAMINER
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ART UNIT	PAPER NUMBER
2185	

DATE MAILED: 09/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Advisory Action **_Before the Filing of an Appeal Brief_**	10/750,037	GROVER ET AL.
	Examiner	**Art Unit**	
	Zhuo H. Li	2617	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>12 September 2006</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ They raise the issue of new matter (see NOTE below);

   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☒ They present additional claims without canceling a corresponding number of finally rejected claims.

      NOTE: <u>See Continuation Sheet</u>. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: <u>1,3-7,9-12 and 14-17</u>.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>see attachment.</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

U.S. Patent and Trademark Office

PTOL-303 (Rev. 08-06)   Advisory Action Before the Filing of an Appeal Brief   Part of Paper No. 20060918

Continuation of 3. NOTE: The newly added claim further defined that the request to exchange data with the hard disk is a write request to write the dirty data corresponding to the predetermined event to the hard disk , raise new issues that would require further search and consideration.

Response to Arguments

1.   Applicant's arguments filed 9/12/2006 have been fully considered but they are not

persuasive.

In response to applicant's arguments against the references individually, one cannot show

nonobviousness by attacking references individually where the rejections are based on

combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re*

Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's arguments that neither Hetzler nor Ramakrishnan discloses

spinning up a hard disk in response to detecting the predetermined event, it is note that

Ramakrishnan teaches purging of the cache being performed only in quiescent periods, i.e., in

idle state (col. 5 lines 31-32), and purging the write cache data by committing selected dirty

blocks to the disk when the cache reaches a predetermined level of dirty data (col. 3 lines 27-32

and col. 5 lines 32-58). In order to perform purge operation to the disk, one skill in the art would

recognize to spin up the hard disk in response to detect the predetermined event. Thus, the

combination of Hetzler and Ramakrishnan teaches the claimed limitations.

In response to applicant's argument that combining Ramakrishnan with Hetlzer would not

produce a device that operates as intended by Hetzler, the test for obviousness is not whether the

features of a secondary reference may be bodily incorporated into the structure of the primary

reference; nor is it that the claimed invention must be expressly suggested in any one or all of the

references. Rather, the test is what the combined teachings of the references would have

suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871

(CCPA 1981).

In response to applicant's argument that combining Ramakrishnan with Hetlzer would not have produced the claimed "in response to the detected event…prior to a request to exchange data with the hard disk", it is noted that Ramakrishnan teaches to purge the write cache data by committing selected dirty blocks to the disk when the cache reaches a predetermined level of dirty data (col. 3 lines 27-32 and col. 5 lines 32-58) during quiescent periods (col. 5 lines 30-32). Thus, the hard disk of the system as taught by Ramakrishnan is obviously spun up prior to a request to exchange data with the hard disk, i.e., request to perform purging, in response to detecting the event. As a result, the combination of Hetzler and Ramakrishnan teaches the claimed limitations.

Note dependent claims 3-6, 9-11 and 14-17 are also rejected for at least the reasons stated above.

SANJIV SHAH
PRIMARY EXAMINER